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Electronically Filed: September 17, 2012

Attorneys for Yvette Weinstein,
Chapter 7 Trustee

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEVADA**

In re
AHARON RONI SAS and
ORNA COHEN,
Debtor.

CASE NO: BK-S- 10-27221-MKN
Chapter 7

**OPPOSITION TO MOTION TO
TURNOVER REMAINING PROCEEDS
OF PERSONAL INJURY SETTLEMENT
TO THE TRUSTEE**

Date: September 26, 2012
Time: 2:30 p.m.

Ctrm: 2
Foley Federal Building
300 Las Vegas Blvd., South
Las Vegas, Nevada 89101
Judge: Hon. Mike K. Nakagawa

Yvette Weinstein, Chapter 7 Panel Trustee, through her counsel, Christine A. Roberts, Esq., of Sullivan, Hill, Lewin, Rez & Engel, hereby opposes the Motion to Turnover Remaining Proceeds of Personal Injury Settlement to the Trustee [Dkt. # 51] ("Opposition"). This Opposition is based upon the entire case file, the Declaration of Yvette Weinstein, upon the memorandum of points and authorities herein, and upon any oral argument this Court may entertain.

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I.**STATEMENT OF FACTS**

Debtors filed a Voluntary Chapter 7 Petition on September 11, 2010. Yvette Weinstein was appointed the Chapter 7 Trustee. On their initial Petition Debtors did not list any claims or lawsuits on either Schedule B or Schedule C. On or about October 19, 2010 Debtors amended their Schedule B and Schedule C to include a personal injury lawsuit. The value listed on both Schedule B and Schedule C was \$16,150. After the Amendments were filed the Trustee changed the case from a no asset to an asset case. The Trustee later changed the case to a no asset and on October 26, 2011 the case was closed. (*See*, Declaration of Yvette Weinstein in Support of this Motion).

Prior to the closing of the case the Trustee contacted the Debtors' personal injury attorney, Imanuel Arin, Esq. to determine the status and value of the case. According to Mr. Arin's office the case had not settled and was only worth approximately \$20,000. (*See*, Weinstein Declaration.) Since the Debtors' exemption and the attorneys' fees would exceed the amount of recovery, the Trustee determined the case was a no asset. (*See*, Weinstein Declaration.) The Trustee would not have changed the case back to a no asset if she had not received this information from Mr. Arin's office.

On June 28, 2012, Debtors filed their Motion to Reopen the Case. The motion was vague but the opening paragraph said that one of the reasons for re-opening the case was to update the status of the lawsuit. The motion appeared to contemplate reopening for the purpose of administering the personal injury case.

On July 23, 2012 the Trustee was contacted by Janet Chubb, Esq. Ms. Chubb represents Roni Shaked. According to Ms. Chubb, her client, who was never listed as a creditor before the case was closed, had a secured lien on the personal injury proceeds. Ms. Chubb also informed the Trustee that the Debtor had obtained a \$200,000 arbitration award in the case. Ms. Chubb informed the Trustee that she had not received a response from Mr. Arin regarding the status of the payment but that insurance defense counsel had confirmed that her client had mailed a check to Mr. Arin. The Trustee directed her attorney to contact the Debtor's attorney and Mr. Arin but her attorney did not receive a response from Mr. Arin. The Trustee then filed a joinder to the motion.

1 On or about August 1, 2012, the court heard the motion to reopen and the court reopened the
2 case. The law office of Roger Giuliani appeared at the hearing on behalf of Mr. Arin. Mr. Giuliani
3 was hired to protect Mr. Arin's fees. After the hearing the Trustee's counsel advised Mr. Giuliani's
4 associate that the Trustee would be filing appropriate motions to approve the award and pay attorney
5 fees. The Trustee also asked that Mr. Arin provide a log of his time on the case.

6 On August 24, 2012, without the knowledge or consent of the Trustee, Mr. Giuliani filed the
7 Motion to Turn Over Remaining Proceeds of Personal Injury Settlement to Trustee Immediately¹.
8 The Trustee's counsel contacted Mr. Giuliani immediately after the filing of the motion. The motion
9 sought to turn over the award in the amount if the award minus Mr. Arin's fees and costs. The
10 Trustee's counsel then sent correspondence to Mr. Giuliani confirming the conversation between
11 them wherein Trustee's counsel informed Mr. Giuliani of the flaws in the motion. (A copy of the
12 correspondence dated August 24, 2012 is attached hereto and incorporated herein as Exhibit "1".)

13 On or about August 27, 2012, the Trustee's counsel and Mr. Giuliani began negotiating a settlement
14 with respect to turning over the award proceeds and paying Mr. Giuliani's fees.

15 On September 10, 2012, the Trustee's counsel received the Shaked Proof of Claim. Among
16 the documents filed in support of the claim was a Pre-Writ of Attachment dated November 1, 2007
17 in a lawsuit filed against the Debtors by Shaked. The Pre-Writ ordered that any award from the
18 Debtors' personal injury case be placed in escrow. The funds were not placed into an escrow, but
19 rather have remained in Mr. Arin's trust account.

20 The Trustee has also obtained a copy of correspondence from Mr. Arin sent to defense
21 counsel in the personal injury case dated October 13, 2011, prior to the closing of the case, wherein
22 Mr. Arin demanded defense counsel turn over the total award to him. (A copy of the Correspondence
23 from Arin to Stephenson is attached hereto and incorporated herein as Exhibit "2"). Mr. Arin further
24 stated in the letter that he would keep his fees and turn over the remainder of the award to the
25 Trustee. However, Mr. Arin never informed the Trustee of the award at any time, from the time he
26 sent the correspondence in October to the time the Debtors filed the motion to reopen the case. The
27

28 ¹ The amount of the award was in excess of \$531,000, but the parties agreed to cap the damages in the amount of
\$200,000, the amount Mr. Arin is holding.

1 Trustee is uncertain as to when he received the funds, but has obtained a copy of a void check dated
2 October 26, 2011, the day the case was closed (A copy of the check is attached hereto and
3 incorporated herein as Exhibit "3"). The Debtors signed a release on October 27, 2011, one day
4 after the case was closed. (A copy of the release is attached hereto and incorporated herein as Exhibit
5 "4").

6 After the Trustee received the Shaked Proof of Claim she began negotiations with Mr. Arin's
7 counsel and Mr. Shaked's counsel. Believing the parties were close to a settlement the Trustee held
8 off filing this motion for turnover.

9 On Thursday, September 13, 2012, the negotiations broke down. Also on Thursday,
10 September 13, 2012, the Trustee received communication from another previously undisclosed
11 creditor, Plaintiff Funding Corporation ("Lawcash"). According to Lawcash's attorney, Lawcash
12 advanced funds to the Debtors pre-petition in exchange for an assignment of a portion of the Debtors
13 proceeds from the settlement.

14 II.

15 LEGAL ARGUMENT

16 Abandonment is governed by U.S.C. § 554. U.S.C. § 554(a) and (b) provide that after notice
17 and a hearing the court may order property of the Estate abandoned. That did not happen in this
18 case. Arin argues in his motion for turnover that his fees are not property of the Estate because the
19 litigation was filed a year before the bankruptcy was filed, it was settled one year after the
20 bankruptcy was filed, the litigation was abandoned and the final discharge issued in December of
21 2010. The fact that the personal injury case was filed six years prior to the bankruptcy filing and
22 settled after the discharge was issued is irrelevant as long as the case remained open and the Trustee
23 had not affirmatively abandoned the suit pursuant to 11 U.S.C. § 554(a) or (b). Without formal
24 abandonment the claim remained property of the Estate pursuant to 11 U.S.C. § 541.

25 Arin argued in his motion that his fees are not part of the bankruptcy because the claim was
26 abandoned. Strangely, however, he is seeking to turn over the remainder of the fees to the Trustee to
27 administer. If there had been an abandonment the funds would be abandoned back to the Debtor
28 pursuant to §544(d). If Arin is arguing that the Trustee abandoned the lawsuit pursuant to 11 U.S.C.

1 § 544(c), technical abandonment, the Trustee believes that can be overcome. Further, technical
2 abandonment is revocable. In *Devore v. Marshack*, *In re Devore*, 223 B.R. 193 (9th Cir B.A.P. 1998)
3 the court followed the rule set forth in *re Shelton*, 201 B.R. 147 (Bankr. E.D. Va 1996) that courts
4 have the discretion to affect or prevent technical abandonment simply by ordering otherwise. The
5 court found that U.S.C. § 554(c) does not limit such a closure to the period prior to the case closure,
6 and courts have set aside technical abandonment in appropriate circumstances. *Shelton* at 155.
7 Appropriate circumstances have been found where the Trustee is given false or incomplete
8 information about the asset by the Debtor; the Debtor fails to list the asset altogether; or where the
9 Trustee's abandonment was the result of a mistake or inadvertence, and no undue prejudice will
10 result in revocation of abandonment. *Devore* citing *In re Ozer*, 208 B.R. 630 (Bankr. E.D.N.Y.
11 1997). *Devore* extended the finding in *Gross v. Petty* (*In re Petty*) 93 B.R.208, 212 (9th Cir. B.A.P.
12 1988), which found that where an asset was not disclosed the case was not fully administered
13 pursuant to U.S.C. §350(a) and therefore not properly and finally closed. In *Devore*, the court found
14 that the cases are based on a finding that the property was not properly scheduled, and thus the
15 U.S.C. § 554(c) requirement was not met, or in equitable consideration. *Devore* at 198.

16 The Trustee changed the case to a no asset based on false or incorrect information relayed to
17 her by Mr. Arin's office and a false value listed on the bankruptcy Petition. The Trustee would likely
18 have employed Mr. Arin as Special Counsel had she been given accurate information regarding the
19 value of the lawsuit. The Trustee made her inquiry to Mr. Arin's office in early 2011. Surely Mr.
20 Arin would have known at that time a better estimate of the case. For instance, the Debtor had over
21 \$80,000 in medical bills. Also, Mr. Arin had already advanced some of the \$25,000 in costs that he
22 incurred. Further, there is no plausible explanation as to why the Trustee would change the case
23 back to a no asset after changing it to an asset case to administer the claim.

24 In the alternative the Trustee argues for an order revolving the technical abandonment by
25 vacating the order closing the case, based on F.R.C.P 60(b)(1). In *In re Gonzalez*, 302 B.R. 687
26 (Bankr. D. Cal. 2003) the court found it was appropriate to consider F.R.C.P. 60(b)(1) in
27 determining whether it is equitable to grant a revocation of the technical abandonment of the
28 property. The factors to consider when considering whether to grant a 60(b)(1) motion are: 1) the

1 danger of prejudice to the opposing party; 2) the length of the delay and its potential impact on the
2 proceedings; 3) the reason for delay; and 4) whether the movant acted in good faith. All four factors
3 are met here. The Trustee clearly acted in good faith and it has been less than a year since the case
4 was closed. The only party to be prejudiced in this instance is the Debtor to whom the property
5 would be abandoned. In this case it was actually the Debtors who re-opened the case to administer
6 the claim.

7 Since the Debtors reopened the case the lawsuit has not been abandoned and the funds should
8 be turned over to the Trustee. Arin has not been employed in the case, nor have his fees been
9 approved. Further, there are two creditors who may have secured claims. There are insufficient
10 funds to pay Arin's fees, the Shaked claim and the Debtor's exemption. This does not even factor in
11 the anticipated claim of Lawcash, who may file a secured claim. Additionally, if the Debtors
12 received an advance on the lawsuit they may not be entitled to their exemption.

13 Due to the many issues which need to be sorted out, the Trustee request that the entire award
14 be turned over to her until the parties can come to a resolution or the court makes a determination
15 regarding the claimants and their priorities, and for an order revoking the abandonment, if any.

16 **III.**

17 **CONCLUSION**

18 **WHEREFORE**, the Trustee prays for an order from this Court requiring Mr. Arin to turn
19 over all funds awarded in the personal injury settlement; for an order revoking the abandonment, if
20 any; and for any further relief the Court may deem to grant.

21
22 Dated: September 14, 2012

SULLIVAN, HILL, LEWIN, REZ & ENGEL
A Professional Law Corporation


23
24 
25 Christine A. Roberts, Esq.
26 Attorneys for Yvette Weinstein,
27 Chapter 7 Trustee
28

EXHIBIT "1"

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Las Vegas, NV 89101
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sullivanhill.com



Sullivan Hill Lewin Rez & Engel
A Professional Law Corporation

Christine A. Roberts
roberts@sullivanhill.com
p 702.202.3287

August 24, 2012

VIA ELECTRONIC MAIL AND FIRST CLASS MAIL

Roger Giuliani
500 N. Rainbow Suite 300
Las Vegas, NV 89107

Re: Sas and Cohen BK-S-10-27221-MKN

Dear Mr. Giuliani:

I have reviewed your Motion to Turn Over Proceeds of Personal Injury Settlement to Trustee. As we discussed your motion is improper for a number of reasons. First your client has not been employed by the Estate. Second the award has not been approved. Third your client's fees have not been approved. Fourth your client needs to turn over the funds to the Trustee who will disburse the funds to your client if and when his fees are approved.

The entire award is property of the Estate pursuant to 11 U.S.C. §541. Your client is holding funds which belong to the Estate. Your client does not own the funds, he is merely a creditor of the Estate. Prior to Mr. Arin retaining you I attempted to contact him on a number of occasions to determine the status of the funds and to request turnover but he did not return my calls. The Trustee demands that you immediately withdraw your motion and your client immediately turn over the entire award to the Trustee. If the Trustee does not turn over the funds by 5:00 p.m. on Tuesday, August 28, 2012 the Trustee will file a motion for turnover of the funds on Order Shortening Time and seek sanctions against your client.

Sincerely,

SULLIVAN, HILL, LEWIN, REZ & ENGEL
A Professional Law Corporation

By: 
Christine A. Roberts

/car

c: Yvette Weinstein



EXHIBIT "2"



CITY CENTER WEST
7201 W. Lake Mead Boulevard, Suite 208 • Las Vegas, Nevada 89128
Telephone: (702) 838-8600 • Facsimile: (702) 838-8601

Immanuel B. Arin

Matthew W. Hoffmann
Also admitted in California
and North Dakota

October 13, 2011

Fax: 474-7237 & Mail

Marsha L. Stephenson, Esq.
Stephenson & Dickinson, P.C.
2820 W. Charleston Blvd. - Suite 19
Las Vegas, NV 89102

Re: Aharon Sas vs. Robert Castro et al

Dear Marsha:

I am in receipt of your correspondence today and have read the letter from Mr. Shaked's attorney. Shaked's claim that they did not receive notice of the bankruptcy does not make any sense. If Mr. Sas' bankruptcy lawyer or Mr. Sas were going to defraud Shaked, as his attorney claims, it wouldn't make any sense for Mr. Sas to list the Shaked lawsuit and judgment on his bankruptcy petition. They would have just left it off the petition. Further, since it was listed, the trustee would have sent notice out. Do they really think that the Trustee would not have sent notice to a creditor that was listed on the petition?

Regardless of whether you believe Shaked's attorney or not, a letter or telephone call from attorney Chattah does not override a U.S. Bankruptcy Court Order or a Bankruptcy Trustee regarding the discharge. Sigal Chattah, Esq. is free to file whatever motion or pleading he or she wants with the bankruptcy trustee. If the trustee decides to make them some type of priority creditor and give them money ahead of other creditors is not relevant for the purposes of sending us the arbitration award check. The check from your client is put into my firm's trust account and no money is disbursed to Mr. Sas directly. My legal obligation is to turn over any proceeds to the trustee after my fees, liens and costs are satisfied. Furthermore, I have the same Writ of Attachment notice from Shaked's attorney that you do and are under the same restrictions regarding payment to Mr. Sas directly.

Marsha, my fees and costs are not part of the bankruptcy proceedings nor have they ever been. Please do not create an issue and delay payment to us based on a claim by Shaked's attorney that they will be filing a motion with the trustee. This is really very simple; please do not make it more complicated than it needs to be. Neither you or your carrier are violating any court order or liable in any way by sending the check to my office directly. Neither you or your carrier are paying Mr. Sas any money by sending the check to my office to be placed in the trust account. This is especially true when you have my representation in writing that no money will be disbursed to Mr. Sas directly and the remaining money, after my fees, liens, and costs will be turned over to the trustee directly.

Marsha L. Stephenson, Esq.
Re: Aharon Sas vs. Robert Castro et al

October 13, 2011
Page 2

Please send the release for Mr. Sas to sign so that we can receive the settlement check from you to place in my firm's trust account. If you have any questions, please e-mail me a convenient time for us to speak and I will get to a location with cell phone service and call you.

Sincerely,
ARIN & ASSOCIATES, P.C.
(Dictated/not read; signed for Mr. Arin
To expedite)

IMMANUEL B. ARIN
Immanuel B. Arin, Esq.

IBA/lg

EXHIBIT "3"

SCOTTSDALE INSURANCE COMPANY

JPMorganChase

SCOTTSDALE INSURANCE COMPANY

CHECK NUMBER: 4314724

Date: 10/26/11

\$200,000.00

Pay: TWO HUNDRED THOUSAND DOLLARS AND NO CENTS

FULL & FINAL RELEASE OF ANY & ALL CLAIMS INCLUSIVE OF ALL L
FENS FOR AHARON SAS
TO THE
Order ARIN & ASSOCIATES TRUST ACCOUNT
OF

Pete W. Harper

00922093

[Redacted line]

EXHIBIT "4"

RELEASE OF ALL CLAIMS, SATISFACTION OF ARBITRATION AWARD
AND AGREEMENT TO INDEMNIFY

For the sum of \$200,000.00 (Two Hundred Thousand and 00/100 Dollars) payable to ARIN & ASSOCIATES Trust Account, the undersigned AHARON SAS does hereby fully release, acquit and forever discharge ROBERT CASTO and AIR ONE TRANSPORT and their insurers, of and from all known and unknown claims, actions, causes of action which he now has or may hereafter acquire by reason of injuries to his person as a result of the incident which occurred on or about March 26, 2004, as described in Plaintiff's Complaint, Case No. A505324.

IT IS ALSO UNDERSTOOD AND AGREED AND MADE A PART HEREOF:

The parties agreed to submit the claims of AHARON SAS to binding arbitration, pursuant to a binding arbitration agreement, with a high limit of \$200,000.00. This binding arbitration was held in front of a panel of three arbitrators on August 24, 2011. The panel issued its award to AHARON SAS on September 30, 2011. Pursuant to the binding arbitration agreement, AHARON SAS agreed that his award would be limited to \$200,000.00.

That the issuance of said draft is in full satisfaction of the binding arbitration agreement and award, is an accord and satisfaction and discharge of any loss, damages, claims, causes of action, suits and liability for this March 26, 2004 incident. The release and payment of this arbitration award also applies to and also covers and includes all unknown, unforeseen, unanticipated and unsuspected injuries, damages, loss and liability, and the consequences thereof, as well as those now disclosed and known to exist.

In addition, the undersigned agree to indemnify and save harmless the parties hereto released from any and all liens, medical or otherwise, claims, bills, accounts, invoices and the like which have been asserted or may be asserted against the undersigned for this March 26, 2004 accident and/or the proceeds of Case No. A505324, including this binding arbitration award.

That AHARON SAS has been discharged in bankruptcy. Counsel for AHARON SAS represents that the money will be kept in his trust with no amount being dispersed directly to AHARON SAS, without approval or consent of the bankruptcy trustee. This representation does not

affect any disbursements for attorneys' fees, costs and liens, relating to the March 26, 2004 incident and subsequent legal proceedings.

That this release, including satisfaction of arbitration award and agreement to indemnify, is the entire, complete, sole and only understanding and agreement of, by and between the undersigned and releasees pertaining to and concerning the subject matter and things expressed herein, and there are no independent, collateral, different, additional or other understandings or agreements, oral or written, or obligations to be performed, things to be done, or payments to be made, and further, no promise, inducement or consideration other than the issuance of said draft has been made or agreed upon by or on behalf of releasees or any of them.

That each releasee shall be held harmless of and from and indemnified for and against all loss, damages, costs, and expenses, including reasonable attorney fees and all other sums which said releasee may hereafter incur, pay, be required or become obligated to pay on account of any and every further, additional or other demand, claim, or suit by or on behalf of any undersigned or any other person, firm, or corporation, including any judgment creditor, including but limited to those identified in AHARON SAS's discharged bankruptcy, which may claim any interest in the arbitration award or for any contest or attempt to modify, change, reform, break, set aside, nullify, cancel or negate this release or any part or provision of said release for any reason whatsoever.

BY SIGNING THIS RELEASE THE UNDERSIGNED DOES THEREBY ACKNOWLEDGE AND WARRANT:

That said release was first carefully read in its entirety by or to them and was and is understood and known to be a full and final compensation settlement, release, accord, and satisfaction and discharge of all claims, actions, and causes of action and suits as above stated. That said release was signed and executed voluntarily and without reliance upon any statement or representation of or by any releasee or any representative, agent, or doctor of same concerning the nature, degree and extent of said damages, loss of injuries, or legal liability therefor. That said release contains the entire agreement of and between all of the parties mentioned therein, and that all of the terms and provisions of said release are contractual and not a mere recital. That the

undersigned is of legal age and capacity and competent to sign and execute said release and accept full responsibility therefor.

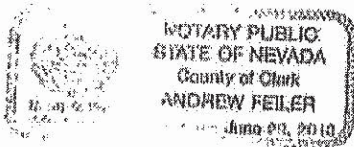
READ AND SIGNED this 27 day of 11, 2011, at Las Vegas NV, by

AHARON SAS

STATE OF NEVADA)
)
COUNTY OF CLARK)

ss:

On this 27 day of Oct, 2011, before me, the undersigned, a Notary Public in and for said County and State, appeared AHARON SAS, known to me to be the person who executed the above and foregoing instrument and who acknowledged to me that he did so freely and voluntarily and for the purpose therein mentioned.



NOTARY PUBLIC

APPROVED AS TO FORM AND CONTENT:

Immanuel Arin
IMANUEL ARIN, ESQ.
MATTHEW HOFFMAN, ESQ.
Attorneys for Plaintiff